

California Administrative Per Se- Facts

Calendar Year 2008

Prepared by DMV Research and Development Branch 3/21/09

Key Finding for 2008

- There was an increase in APS actions initiated in 2008, up 5.7% over those initiated in 2007, while the proportion of actions that were set aside dropped for a second consecutive year to 8.15% of actions initiated, a decrease of 5.7% from the 2007 set aside rate of 8.65%. Set aside rates dropped by between 10% and 14% subsequent to a hearing for all types of APS hearings held during 2008.
- There was a 14.3% increase in the number of hearings requested in 2008, resulting in 27.2% of APS actions resulting in hearings, up 8.1% from 2007. A stay of the APS action was imposed for 89.2% of the actions for which a hearing was scheduled, up 5.4% from the 84.6% that were stayed for hearings scheduled in 2007. This is the first time stays are reported in the APS Facts publication. A stay indicates that the onset of the suspension action was delayed pending completion of a hearing. The hearings scheduled in these counts may be for actions that were initiated anytime in the past but for which the hearing was scheduled or held in this reporting year.
- The number of APS orders of suspension mailed by the department (in place of, or in addition to, those issued “on the spot” by law enforcement) dropped 5.7%, from 48,491 in 2007 to 45,708 in 2008, and now constitutes 20.5% of all orders issued. An APS order of suspension is mailed by the department to correct an original order issued by law enforcement or when there is no record that an order was issued.
- Total actions for repeat offenders increased for the fourth consecutive year, up 7.3% from 2007.
- The number of suspensions for commercial drivers driving in commercial vehicles increased 4-fold but continues to be very few (only 32 such drivers suspended in 2008 compared to 6 such drivers suspended in 2007).
- The percentage of total arrested DUI offenders who refused a chemical test dropped 7.2% from last year’s refusal rate. Overall, the refusal rate was 4.47% in 2008, compared to 4.82% in 2007. This refusal rate continues to compare favorably to the 7.74% refusal rate in FY 90/91, the first year that the implied consent suspension/revocation lengths were increased to their current lengths.
- Of the 126,807 eligible first offenders, including the 2,835 commercially licensed first offenders who no longer automatically receive a restricted license (as of September 20, 2005), 23.8% opted for restricted licenses in 2008, up from the 21.2% of first offenders and commercial drivers who received restrictions in 2007
- Departmental reviews held of prior hearings increased 6.3% in 2008, but the proportion set aside subsequent to

review dropped 19.1% from the prior year's set asides, decreasing from 4.5% being set aside in 2007 to 3.6% set aside in 2008.

- ☐“Driver Safety/Driver Investigation” reviews were down 4.0% from 2007. In December 2000 a policy change disallowed use of these reviews for APS cases that should have ended their occurrence.
- ☐Scheduled dismissal hearings increased 54.5% in 2008. These hearings are only available to drivers who the prosecutor determines will not be prosecuted after having been issued an APS .08 order upon arrest.

Administrative Per Se Process Measures

Administrative Per Se (APS) Statistics for 2007 and 2008

	2007	2008	% change
• Total APS actions initiated (including actions later set aside)	210,405	222,462	5.7
› Total .08 ^{footnote 1} APS actions initiated	186,961	199,023	6.5
› Total .01 ^{footnote 2} suspensions initiated	23,444	23,439	0.0
• Total APS actions set aside	18,192	18,130	-0.3
› Total .08 APS actions set aside	16,860	16,871	0.1
› Total .01 suspensions set aside	1,332	1,259	-5.5
• Total APS set aside rate	8.65%	8.15%	-5.7
› Total .08 set aside rate	9.02%	8.48%	-6.0
› Total .01 set aside rate	5.68%	5.37%	-5.5
• Net total APS actions taken (excluding actions later set aside)	192,213	204,332	6.3
› Net total .08 APS actions	170,101	182,152	7.1
› Net total .01 actions	22,112	22,180	0.3
• Total APS actions taken, suspension/revocation order served by:			
› Law enforcement	161,914	176,754	9.2
› DMV	48,491	45,708	-5.7

Net APS Actions by Offender Status/License Classification:^{footnote 3}

	2007	2008	% change
• Net total APS actions, noncommercial drivers	189,310	201,160	6.3
• Net total commercial driver license (CDL) APS actions taken	2,903	3,172	9.3
• Net total actions of commercial drivers in commercial vehicles	6	32	433.3
• Net APS .08 actions for drivers with no prior DUI convictions or APS actions ^{footnote 4}	123,594	132,266	7.0
› 4-month license suspensions	90,518	93,813	3.6
› 30-day suspensions plus 5-month COE ^{footnote 5} restrictions	24,990	30,159	20.7
› First-offender chemical test refusals	5,627	5,459	-3.0
› CDL first offender suspensions/restrictions	2,459	2,835	15.3
• Net APS .08 actions taken for drivers with prior DUI convictions	46,507	49,886	7.3
› Suspensions	42,979	46,388	7.9
› Revocations (Refusals)	3,528	3,498	-0.9
• Net APS .01 actions for drivers submitting to a BAC (evidential or PAS ^{footnote 6}) test	21,686	21,747	0.3
• Net APS .01 actions for drivers refusing to submit to a BAC (evidential or PAS) test	426	433	1.6

APS Chemical Test Refusal Process Measures:

	2007	2008	% change
• Total .08 and .01 APS refusal actions initiated (including actions later set aside)	10,140	9,950	-1.9
• Total .08 refusal actions set aside	526	525	-0.2
• Total .01 refusal actions set aside	33	35	6.1
• Net total .08 and .01 APS refusal actions (excluding actions later set aside)	9,581	9,390	-2.0
› Net total .08 refusal actions	9,155	8,957	-2.2
› Net total .01 refusal actions	426	433	1.6
• Chemical test refusal rate (including actions later set aside)	4.82%	4.47%	-7.2
• Net .08 APS refusal (suspension) actions for subjects with no prior DUIs	5,627	5,459	-3.0
• Net .08 APS refusal (revocation) actions for subjects with prior DUIs	3,528	3,498	-0.9

¹ .08 refers to APS actions taken subsequent to obtaining evidence of a Blood Alcohol Concentration (BAC) equal to or in excess of the .08% per se level or on the basis of a chemical test refusal. Such an action is taken in conjunction with a DUI arrest.

² .01 refers to APS suspensions taken against drivers under the age of 21 with BACs of .01% or greater or on the basis of a chemical test refusal, and are not taken in conjunction with a DUI arrest.

³ All entries in this category exclude actions later set aside but, where possible, include actions taken on the basis of either a chemical test refusal or a BAC test result.

⁴ Prior DUI convictions or APS actions consist of any such conviction or action where the violation occurred within 10 years prior to the current violation.

⁵ This restriction allows driving to, from, and during the course-of-employment and to and from alcohol program (enacted 1/1/95).

⁶ PAS is a Preliminary Alcohol Screening test which is considered legally sufficient evidence to impose an action under the provisions of the zero tolerance laws.

Total APS Hearings: ^{footnote 7}

	2007	2008	% change
• Total .08 and .01 inperson or telephone APS hearings scheduled	53,008	60,572	14.3
• Percentage of total APS actions resulting in scheduled hearings ^{footnote 8}	25.2%	27.2%	8.1
• Percentage of total .08 and .01 APS hearings resulting in a stayed APS action ^{footnote 9}	84.6%	89.2%	5.4
• Total .08 and .01 inperson or telephone APS hearings held and/or completed	52,572	60,269	14.6
.08 Hearing Activity:			
› .08 hearings held and/or completed	47,834	55,135	15.3
› .08 actions set aside following hearings	4,690	4,767	1.6
• Percentage of .08 APS actions set aside following hearings	9.8%	8.6%	-11.8
.01 Hearing Activity:			
› .01 hearings held and/or completed	4,738	5,134	8.4
› .01 actions set aside following hearings	528	504	-4.5
• Percentage of .01 APS actions set aside following hearings	11.1%	9.8%	-11.9

APS Chemical Test Refusal Hearings:

	2007	2008	% change
• Total .08 and .01 APS refusal hearings scheduled	3,331	3,526	5.9
• Percentage of total refusal actions resulting in a scheduled hearing	32.9%	35.4%	7.9
.08 Refusal Hearing Activity:			
› .08 refusal hearings held and/or completed	3,182	3,385	6.4
› .08 refusal actions set aside following hearings	402	383	-4.7
• Percentage of .08 APS refusal actions set aside following hearings	12.6%	11.3%	-10.4
.01 Refusal Hearing Activity:			
› .01 refusal hearings held and/or completed	115	128	11.3
› .01 refusal actions set aside following hearings	21	20	-4.8
• Percentage of .01 refusal actions set aside following hearings	18.3%	15.6%	-14.4

Other APS Activity:

	2007	2008	% change
• Total .08 and .01 APS dismissal hearings scheduled after meeting renewed right to a hearing requirements	123	190	54.5
› APS dismissal hearings held and/or completed	121	190	57.0
› APS actions set aside following dismissal hearings	41	53	29.3
• Percentage of APS actions set aside following dismissal hearings	33.9%	27.9%	-17.7
• Total .08 and .01 Driver Safety/Driver Investigations scheduled ^{footnote 10}	322	309	-4.0
› APS Driver Safety/Driver Investigations held and/or completed	310	286	-7.7
› Actions set aside following APS Driver Safety/Driver Investigations	174	180	3.4
• Percentage of APS actions set aside following Driver Safety/Driver Investigations	56.1%	62.9%	12.1
• Total .08 and .01 APS departmental reviews scheduled	1,440	1,530	6.3
› APS departmental reviews held and/or completed	1,437	1,527	6.3
› APS actions set aside following departmental review	64	55	-14.1

• Percentage of APS actions set aside following departmental reviews	4.5%	3.6%	-19.1
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⁷ These figures include refusal hearings but exclude Driver Safety/Driver Investigation hearings, subsequent APS dismissal hearings and departmental reviews.

⁸ Both numerator and denominator include those actions later set aside as a result of the hearing.

⁹ A stay indicates that the onset of the suspension action was delayed pending completion of a hearing. The hearings scheduled in these counts may be for actions that were initiated anytime in the past but for which the hearing was scheduled or held in this reporting year.

¹⁰ These cases may or may not have involved a hearing request.